

**SIGNAL INVESTMENT &
MANAGEMENT CO.**

y.

DAVID A. KERN

Applicant.

Opposition No. _____

Application Serial No. 78/043,651

**Published in the Official Gazette
on November 1, 2005**

November 29, 2005

SUBMISSION OF NOTICE OF OPPOSITION

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

TTAB

Dear Sir:

Enclosed in duplicate is the Notice of Opposition to registration of the above-identified trademark and a \$300 check in payment of the filing fee for the Notice of Opposition.

It is respectfully requested that the above-identified Opposition proceeding be instituted.

Respectfully submitted,

MILLER & MARTIN

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1200 One Nashville Place
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Attorneys for Opposer,
Signal Investment & Management Co.



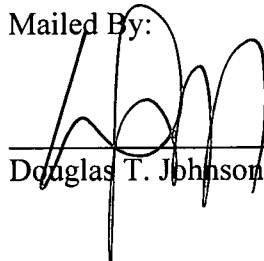
CERTIFICATE OF MAILING

I hereby certify that the preceding Notice of Opposition is being deposited with the United States Postal Service as first class mail in an envelope addressed to:

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

on this 30th day of November, 2005.

Mailed By:



Douglas T. Johnson

MILLER & MARTIN PLLC
1000 Volunteer Building
832 Georgia Avenue
Chattanooga, TN 37402
(423) 756-6600

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Application Ser. No. 78/043,651

Published in the Official Gazette on November 1, 2005

SIGNAL INVESTMENT & MANAGEMENT CO.)

Opposer,)

v.)

DAVID A. KERN,)

Applicant.)

Opposition No. _____

NOTICE OF OPPOSITION

Signal Investment & Management Co., a Delaware corporation, located and doing business at 1105 North Market Street, Suite 1300, Wilmington, DE 19390, believes that it will be damaged by the registration or the mark shown in Serial No. 78/043,651 in International Class 5 and hereby opposes the same.

As grounds for this opposition, it is alleged that:

1. The Applicant seeks to register HERPASIL as a trademark for vitamins, nutritional supplements, and medicated creams and balms, all in either oral or topical form, for the treatment and removal of warts, cold sores, rashes, boils, blisters, birthmarks, moles, herpes, and other skin blemishes, as is evidenced by application Serial No. 78/043,651 filed on January 17, 2001 by David A. Kern, which application was published in the *Official Gazette* on November 1, 2005.

2. Signal Investment & Management Co. is the owner of the following trademark used in connection with lip balm in International Class 5:

12/12/2005 KGIBBONS 00000025 78043651

01 FC:6402

300.00 OP

<u>Trademark</u>	<u>Registration No.</u>	<u>Registration Date</u>
HERPECIN-L	912,472	June 8, 1971

3. Signal Investment & Management Co. and its licensees and predecessors in title (collectively "Opposer") have been manufacturing, licensing and marketing lip balm under the HERPECIN-L mark since as early as 1970.

4. Since prior to the January 17, 2001 priority date of Applicant's Serial No. 78/043,651, there being no actual use alleged in the application opposed herein, Opposer has extensively advertised, promoted, and sold lip balm preparations in interstate and foreign commerce under or in connection with its distinctive HERPECIN-L mark. Opposer's current product line under the HERPECIN-L mark includes medicated and non-medicated lip balm.

5. Opposer's HERPECIN-L mark, by virtue of substantial use, has acquired great value as an identification of Opposer's goods and distinguishes such goods from the goods of others. As a result of Opposer's extensive sales, advertising, and promotion of its goods under the HERPECIN-L mark, Opposer has at great expense built up valuable good will symbolized by the mark.

6. There are substantial similarities between Opposer's HERPECIN-L mark and Applicant's HERPASIL mark which is the subject of Serial Number 78/043,651.

7. In view of the similarity of the respective marks and the substantially identical nature of the goods of the respective parties, it is alleged that Applicant's mark so resembles Opposer's HERPECIN-L mark previously used in the United States, and not abandoned, as to be likely to cause confusion, or to cause mistake or to deceive.

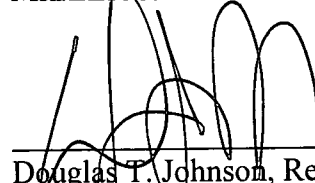
8. Signal Investment & Management Co. is the owner of and relies on the United States trademark registration as specified in paragraph 2 above, said

registration being valid, subsisting, unrevoked and uncanceled, as well as prima facie evidence of the validity of the mark shown therein, and prima facie evidence of the exclusive right of Opposer to use and license the mark shown therein in commerce in connection with the goods named therein, without condition or limitation, the same also being constructive notice of Opposer's claim of ownership to the mark shown therein, all as provided in Sections 7(b), 22, and 33 of the Trademark Act of 1946.

9. In view of the similarities between Applicant's claimed mark of HERPASIL and Opposer's long used HERPECIN-L mark, and the substantially similar nature of the goods of the respective parties, it is alleged that Applicant's mark so resembles the HERPECIN-L mark as to be likely to cause confusion, or to cause mistake, or to deceive to the damage of the previously established good will and reputation of the Opposer.

WHEREFORE, Signal Investment & Management Co. prays that said Application Serial No. 78/043,651 be rejected, that no registration be issued thereon to Applicant, and that this Opposition be sustained.

MILLER & MARTIN PLLC



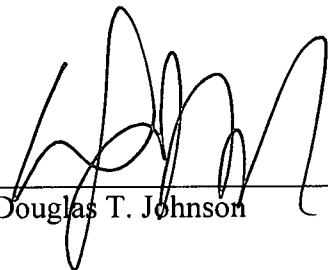
Douglas T. Johnson, Reg. No. 31,841
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Douglas T. Johnson